

## **REMARKS**

This Amendment is filed alongside a Request for Continued Examination in response to the Office Action mailed on April 16, 2008. In the present Amendment, claims 1, 7, 10, 16, and 26 are amended. Claims 1-19, 23, 24 and 26-32 are currently pending. In light of the following remarks, the applicant requests withdrawal of the pending rejections and advancement of this application to allowance.

### ***Preliminary Matters***

The applicants have amended independent claims 1, 7, 10, 16, and 26 herein to clarify that the data downloaded into a pump includes individualized, patient-specific data items. Support for these amendments can be found at least at page 4, line 21, to page 5, line 2, which and reflect that at least certain data items (e.g. patient age and weight) to be provided to a pump relate to operation of the pump with respect to a specific patient, rather than a class of patients. Additional support can be found at page 22, line 8, to page 23, line 10. These claim amendments are intended to be clarifying only, and reflect the originally intended scope of the claims.

### ***Rejection Under 35 U.S.C. § 103***

#### **A. Claims 1-3, 6-20, and 26-32**

Claims 1-3, 6-20, 23, 24, and 26-32 stand rejected as being obvious over Peterson (U.S. Patent 5,788,669) in view of Eggers (U.S. Patent 5,713,857) and in view of official notice. The Applicant respectfully traverses this rejection and does not concede the characterizations of the cited references or the pending application set forth in the office action.

Each of independent claims 1, 7, 10, 16, and 26 recite, among other elements, that at least some of the program data batch-downloaded into memory on a pump are individualized, patient-specific data items. The applicant asserts that no combination of the cited references and the Official Notice can teach or suggest at least this element, and therefore no combination of the references can result in the claimed combination.

In an example contrast to the independent claims, none of the asserted prior art references teach or suggest batch-downloading of data items that include individualized, patient-specific data items. Peterson fails to teach or suggest batch-downloading to a pump data items including

individualized, patient-specific data items. As cited in the Office Action at page 2, Peterson discloses delivery of fluid according to a specific therapy (col. 1:20-21); however, Peterson is therefore allows therapy-specific pump operation, not individualized, patient-specific pump operation. As illustrated in Peterson, pump programs downloaded to a pump are held separately from a trace table, which contains patient and pump identifying information. See Peterson, Figure 2; col. 6:41-65. Peterson therefore stores patient information on a computer separately from anything transmitted to a pump, and does not provide for batch download to a pump of individualized, patient-specific data items as claimed.

Eggers also fails to teach or suggest batch-downloading to a pump data items including individualized, patient specific data items. The Office Action indicates that Eggers discloses batch downloading of patient-specific data because “dosages are in fact patient-specific data. For example a toddler has a dosage requirement of a medicine which is usually different from an adult.” Office Action at page 9. The applicant respectfully disagrees with this characterization of Eggers and the claim for a number of reasons. First, dosages for adult and pediatric patients do not correspond to individualized, patient-specific data. A generalized adult dose does not distinguish among different doses required for different adult individuals, and therefore dosages in general cannot satisfy this aspect of the claim. Second, Eggers does not in fact disclose batch download of data including individualized, patient-specific dosages; the referenced portion of Eggers relates instead to “dosage units and dose limits”. Eggers, col. 10:65-66. These references relate to global dosing limits and units of measure, and are not based upon the particular patient or even the type of patient using the pump. In fact, Eggers discloses that user programming of actual rate/dose information is required for each specific patient, which indicates that individualized, patient-specific data items are not batch-downloaded to the pump. Eggers, col. 16:30-45. Third, and with respect to the toddler/adult distinction made in the Office Action, Eggers contains a pediatric drug calculating mode that allows a user to edit dosage calculations *after* a generalized dosage is transmitted to the pump (Eggers, col. 16:59-64); Eggers would therefore not download separate dosage-related items for pediatric and adult patients, even if such different programs correspond to individualized, patient-specific data (which they do not, as previously explained).

Further with respect to Eggers, the Office Action indicates that, at least with respect to claim 26 and related claims, “the step of downloading the library of data wherein each drug

library can be customized for each user is equivalent to batch downloading data for a specific patient.” Office Action at p. 8. The applicant respectfully disagrees with this characterization as well. The portion of Eggers cited in the Office Action (col. 10:62 to col. 11:7) refers not to data items specific to a user, but information that “can be used to perform drug calculation based infusions.” Eggers explicitly requires that patient-related drug calculations and entry of resulting dosing variables be performed on a pump, not stored as a separate set of data items. Eggers, col. 16:16-32 (The user must enter the drug amount, diluent volume, patient weight. . .To enter values for these parameters, the user must press the softkey. . .); col. 16:30-45. Eggers therefore describes a system in which a user can create and download to a pump customized libraries of these general information items, and later use the pump to individualize certain parameters to a patient. Eggers therefore does not relate to batch download of individualized, patient-specific data items.

Furthermore, and as stated in the previous response, the Official Notice does not relate to batch downloading the plurality of data items into memory within the pump, at least some of the data items batch downloaded into memory being individualized, patient-specific data items as set forth in the claims.

Based upon the above discussion, the applicant respectfully asserts that no combination of the cited references and the Official Notice teaches or suggests each of the elements of these independent claims. Likewise, claims 2-3, 6-9, 11-15, 17-20, and 27-32 depend from the independent claims, and therefore inherit the limitations of the respective independent claims. Applicants respectfully request reconsideration and withdrawal of the rejection of these dependent claims as well.

#### **B. Claims 4 and 5**

Claims 4 and 5 stand rejected as being obvious over Peterson in view of Eggers and Official Notice as applied to claim 3, and further in view of “Acute Health Solutions.” The applicant respectfully traverses this rejection and does not concede the characterizations of the cited references or the pending application set forth in the office action.

Claims 4 and 5 depend from claim 1 and also set forth that at least some of the program data batch-downloaded into memory on the pump are individualized, patient-specific data items.

As discussed above, Peterson, Eggers, and the Official Notice fail to teach or suggest a combination that includes this element. Acute Health Solutions also fails to teach or suggest these elements. Therefore, no combination of the cited references or official notice will result in the claimed combination of elements. The applicant respectfully requests reconsideration and withdrawal of the pending rejection of these claims.

### CONCLUSION

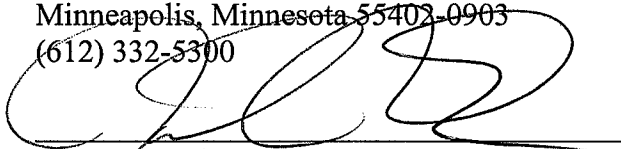
In view of the foregoing remarks, the applicant respectfully requests withdrawal of the pending rejection and advancement of this application to issuance. The applicant also notes that there may be additional reasons that the claimed invention is patentably distinct from the cited references in addition to those raised in the above remarks. The applicant reserves the right to raise any such reason in the future.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact the undersigned attorney at (612) 336-4608.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: October 16, 2008



John C. Reich  
Reg. No. 37,703  
JReich/AJL/dc